

In the matter of)
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Copper Valley Wireless, LLC)
)
Waiver of Section 54.1007(a) of the)
Commission's Rules)

¹ Connect America Fund, WC Docket No. 10-90, A National Broadband Plan for Our Future, GN Docket No. 09-51, Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135, High-Cost Universal Service Support, WC Docket No. 05-337, Developing an Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Lifeline and Link-Up, WC Docket No. 03-109, Universal Service Reform – Mobility Fund, WT Docket No. 10-208, *Report and Order and Further Notice of Proposed Rulemaking*, 26 FCC Rcd 17663, 17733 ¶¶ 299-300 (2011) (*USF/ICC Transformation Order*), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011), upheld on review *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. May 23, 2014).

accountability, and the use of market-based mechanisms, such as competitive bidding, to provide more targeted and efficient support than in the past.² For the first time, the Commission established a universal service support mechanism dedicated exclusively to mobile services—the Mobility Fund.³ The Commission decided that Mobility Fund Phase I funding would be awarded through a reverse auction mechanism and delegated to the Wireless Telecommunications Bureau and the Wireline Competition Bureau (together, the “Bureaus”) authority to implement this program.⁴ On September 27, 2012, the Commission conducted the first Mobility Fund Phase I auction, Auction 901, which offered \$300 million in one-time high-cost universal service support. The Commission also set aside up to \$50 million in one-time high-cost universal service support, Tribal Mobility Fund Phase I, for carriers that committed to provide current- and next-generation mobile voice and broadband services on Tribal lands.⁵

4. Bidding in Tribal Mobility Fund Phase I, Auction 902, took place on February 25, 2014.⁶ There were a total of five winning bidders. The winning bidders are eligible to receive a total of up to \$49,806,874 in one-time Tribal Mobility Fund Phase I universal service support to provide 3G or better mobile voice and broadband services covering a population of 56,932 in 80 biddable areas. These areas include 18 biddable areas on five Reservations or Tribal lands in Arizona, Montana, New Mexico, and Utah; and 62 biddable areas in 49 Alaska Native Village Statistical Areas and 13 bidding areas otherwise in Alaska Native Regions.⁷ Winning bidders, such as Copper Valley, were required to submit FCC Form 680, the post-auction long-form application, by April 4, 2014.⁸

5. *Auction 902 Bidding.* In the *USF/ICC Transformation Order*, the Commission determined that the census block should be the minimum geographic building block for which Tribal Mobility Fund Phase I support is provided, and delegated to the Bureaus authority to provide in the auction procedures a process for aggregation of those minimum building blocks into larger units for bidding.⁹ In so doing, the Commission observed that Alaska presented a unique situation because the average size of census blocks in Alaska is more than 50 times the average size of census blocks in the other 49 States; as a result, bidding areas in Alaska might need to be based on census blocks.¹⁰ Consistent with the Commission’s guidance, with the Bureau’s experience in Auction 901, and with the record, in the *Auction 902 Procedures Public Notice* the Bureaus established auction procedures providing that, with the exception of certain blocks in Alaska, bidders would be able to bid for support in areas consisting of predefined aggregations of eligible census blocks. Under this approach, eligible census blocks were aggregated by the Tribal land in which they were located, with one bidding area for each tract within the Tribal land. For Alaska, eligible Tribal lands were identified using the Census data boundaries for the Alaska Native Village statistical areas (ANVSAs) as well as the boundaries of the twelve geographic Alaska Native regional corporations and the Annette Island Reserve, which together cover the entire state

² *Id.* at 17667 ¶ 1.

³ *Id.* at 17773 ¶¶ 299-300.

⁴ *USF/ICC Transformation Order*, 26 FCC Rcd at 17773, 17781, 17783 ¶¶ 299, 321, 329.

⁵ *Id.* at 17773 ¶ 299.

⁶ Tribal Mobility Fund Phase I Auction Closes; Winning Bidders Announced for Auction 902, AU Docket No. Public Notice, 29 FCC Rcd. 1974 (2014) (*Auction 902 Closing Public Notice*).

⁷ *Id.*

⁸ *Id.*

⁹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17787-88 ¶ 346; 47 C.F.R. § 54.1002(a).

¹⁰ *USF/ICC Transformation Order*, 26 FCC Rcd at 17788 ¶ 347. Census blocks are the smallest geographic unit for which the Census Bureau collects and tabulates decennial census data. Every census block fits within a census tract, and each census tract consists of multiple census blocks. *Id.* at 17787, n. 583.

of Alaska.¹¹ Eligible census blocks within an ANVSA were aggregated by the ANVSA with a bidding area for each tract in the ANVSA. For areas outside of ANVSAs, the Bureaus did not aggregate census blocks, but instead established bidding by individual census block, because they concluded that the aggregation of all eligible blocks within an Alaska Native regional corporation could result in bidding areas so vast that it could dampen participation and thwart services to currently unserved populations.¹² Copper Valley's winning bids covered census blocks outside of any ANVSA and the aggregation exception required Copper Valley to bid by census block in those areas. Further, because a Tribal Mobility Fund Phase I recipient must provide 3G or 4G service to at least 75 percent of the population associated with the eligible blocks in each biddable area for which it won support, the requirement to bid by census block means that Copper Valley's coverage requirement will be measured on a block-by-block basis.¹³

6. *Letters of Credit for Long-form Application.* In the *USF/ICC Transformation Order*, the Commission decided that winning bidders in a Mobility Fund Phase I reverse auction would be required to post LOCs as financial security prior to being authorized to receive support.¹⁴ The Commission decided that an irrevocable stand-by LOC would be the best financial instrument to minimize the possibility that Tribal Mobility Fund support would become property of a recipient's estate should it subsequently file for bankruptcy protection, thereby tying up the funds in the bankruptcy proceeding and preventing them from being used promptly to accomplish the Tribal Mobility Fund's goals.¹⁵ The Commission concluded that such an instrument would protect the government's interest in the funds it disburses in Tribal Mobility Fund Phase I.¹⁶ The Commission stated that LOCs must be issued in substantially the same form as set forth in the model LOC provided in the *USF/ICC Transformation Order*.¹⁷ Among other things, the model LOC provides that the Commission may draw upon the entire amount of the LOC in the event that the winning bidder defaults on its auction obligations or fails to perform.¹⁸ Accordingly, the Commission's Tribal Mobility Fund Phase I rules and procedures require that before it can be authorized to receive Tribal Mobility Fund Phase I support, a winning bidder must submit an acceptable LOC for each winning bid to secure its performance.¹⁹

¹¹ Tribal Mobility Fund Phase I Auction Rescheduled for December 19, 2013; Notice and Filing Requirements and Other Procedures for Auction 902, AU Docket 13-53, *Public Notice*, 28 FCC Rcd. 11628, 11672 ¶ 151 (2013) (*Auction 902 Procedures Public Notice*).

¹² *Id.* at 11672 ¶¶ 152-54.

¹³ *Id.* at 11673 at ¶ 156.

¹⁴ *USF/ICC Transformation Order*, 26 FCC Rcd at 17810-11 ¶¶ 443-47.

¹⁵ *Id.* at 17811-12 ¶ 449.

¹⁶ *Id.* at 17811 ¶ 447.

¹⁷ *Id.* at 17810 ¶ 444, 18319-23 Appendix N.

¹⁸ 47 C.F.R. § 54.1007(c)(1); *USF/ICC Transformation Order*, 26 FCC Rcd at 17811 ¶ 448; *see also* 47 C.F.R. § 54.1006(f). The LOC is required to be in an amount equal to the amount of Tribal Mobility Fund Phase I support received plus the established additional default payment percentage, which for Auction 902 was ten percent of the winning bid amount. 47 C.F.R. § 54.1007(a); *USF/ICC Transformation Order*, 26 FCC Rcd at 17810-11 ¶¶ 446-47; *Auction 902 Procedures Public Notice*, 28 FCC Rcd at 11681 ¶ 188.

¹⁹ 47 C.F.R. § 54.1005(b)(2)(vii); *USF/ICC Transformation Order*, 26 FCC Rcd at 17810 ¶ 444; *Auction 902 Procedures Public Notice*, 28 FCC Rcd at 11681-82 ¶¶ 188, 191; *Auction 902 Closing Public Notice*, 29 FCC Rcd at 1979 ¶ 22.

7. *Copper Valley's Request for Waiver.* Copper Valley submitted 11 winning bids for Tribal Mobility Fund support in Alaska.²⁰ Copper Valley's winning bids cover 11 census blocks in the Ahtna, Inc. region, including the villages of Tazlina and Kluti-Kaah.²¹

8. Copper Valley submitted with its long-form application a request that it be permitted to submit a single LOC for the 11 winning bids for which it seeks support.²² Copper Valley will provide 4G LTE service to the 11 census blocks in its 11 winning bid areas by making upgrades to a single tower at one site in its existing network, Willow Mountain, which provides coverage to the entire population of 127 persons in those blocks.²³

III. DISCUSSION

9. The Commission may waive its rules and requirements "for good cause shown."²⁴ A waiver is appropriate only if "special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."²⁵ We may find that a rule waiver may serve the public interest where the waiver would not conflict with the policy underlying the rule.²⁶

10. For the reasons set forth below, we conclude that there is good cause for a grant of Copper Valley's request for relief from the LOC requirement here because of the special circumstances presented by Copper Valley and because the modification of the LOC requirement will serve the public interest in this case.

11. We find that grouping Copper Valley's separate block-based winning bids into one group that is secured by a single LOC is a reasonable way for Copper Valley to provide a LOC to secure its Tribal Mobility Fund support. Although Copper Valley's winning bids covered individual census blocks outside of any ANVSA and were therefore not aggregated by tract, its winning bids are mostly contiguous, with one exception²⁷, and the 11 census blocks are all within the same census tract and Alaskan regional corporation area, Ahtna, Inc.²⁸ Together, the 11 census blocks cover a total population of 127 and Copper Valley plans to meet its performance requirements through upgrades to a single tower. Grouping Copper Valley's winning bids by tract for the purpose of submitting the LOC is similar to the

²⁰ *Auction 902 Closing Public Notice*, 29 FCC Rcd 1974, Attachment B. The Bureau intends to make Copper Valley's long-form application publicly available, along with those of other Auction 902 winning bidders, following the completion of processing and authorization of support to all Auction 902 winning bidders.

²¹ Copper Valley Wireless, LLC, Waiver Request, filed on April 4, 2014, at 1-2 (*Request*).

²² *See Id.*

²³ Request at 2; *see also* Copper Valley Long-Form Application, Project Description Attachment.

²⁴ *See* 47 C.F.R. §§ 1.3, 0.131(a).

²⁵ *See, e.g., Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²⁶ *See WAIT Radio v. FCC*, 418 F.2d 1153, 1155, 1157 (D.C. Cir. 1969) (finding that the Commission may decide in some instances that rule waiver serves the public interest if an applicant's proposal will not undermine the policy served by the rule). *See also Thomas Radio v. FCC*, 716 F.2d 921, 924 (D.C. Cir. 1983). *Cf.* 47 C.F.R. § 1.925(b)(3)(i).

²⁷ AK-Ahtna-33 (Census Block 0226100001003008) is significantly larger than Copper Valley's other ten winning bid areas, which cover an average of only 18 square miles each. However, Copper Valley states that the entire population of AK-Ahtna-33 is located on the side of the block nearest to Copper Valley's other ten winning bid areas. *See Request* at 2 and fn. 6.

²⁸ Ahtna, Inc. is one of the 13 Alaska Native Regional Corporations established by Congress under terms of the Alaska Native Claims Settlement Act in 1971 and covers approximately 1,528,000 acres. *See Copper Valley Project Description* at fn. 1.

way its LOC requirement would have been applied had its winning bids covered census blocks aggregated by tract within an ANVSA. In addition, because a single project at one tower site will serve the entire population within all 11 census blocks, any performance default by Copper Valley with respect to one census block is very likely to be the cause of a performance default for all of the census blocks for which it is authorized to receive Tribal Mobility Fund support. Copper Valley will continue to be required to meet its obligation to serve 75% or more of the population in each census block.²⁹

12. Further, we find that grant of the waiver request would not conflict with the policies underlying the LOC requirement, which are to ensure that winning bidders have committed sufficient financial resources to meet the program obligations associated with Tribal Mobility Fund Phase I support and to protect the government's interest in any disbursements of support.³⁰ Copper Valley's buildout plans, as described in its application, show that Copper Valley proposes a single project to be covered by one LOC which corresponds to a set of equipment upgrades at one tower site. Copper Valley represents that it has sufficient financial resources for this project and provides details of those plans in its long-form application. By providing a single LOC, Copper Valley will guarantee its performance in meeting its public interest obligations associated with its winning bids for Tribal Mobility Fund Phase I support and safeguard the government's interest in any disbursements. We further find that in these circumstances, grant of the waiver serves the public interest by taking into account the special circumstances of Copper Valley's winning bids and ensuring that an appropriate guarantee of performance is in place to ensure the expansion of 4G LTE mobile voice and broadband service to the Alaska communities covered by these 11 winning bids.

13. For the reasons stated above, we waive the requirement that a winning bidder submit an LOC for each winning bid to allow Auction 902 winning bidder Copper Valley to submit a single irrevocable stand-by LOC with its long-form application for Tribal Mobility Fund Phase I support.³¹

IV. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i), 4(j), 5(c), 201, 254, and 303(r), of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 155(c), 201, 254, 303(r), and sections 0.131, 0.331, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, and 1.3, the request of Copper Valley for waiver of the Auction 902 requirement that a winning bidder submit a letter of credit for each winning bid is GRANTED.

²⁹ In the event of any default by Copper Valley, the Commission would draw the entire amount of the LOC as required under section 54.1007(c) of the Commission's rules. See 47 C.F.R. § 54.1007(c)(1)-(2). See also *USF/ICC Transformation Order*, 26 FCC Rcd at 17811 ¶ 448.

³⁰ *USF/ICC Transformation Order*, 26 FCC Rcd at 17810-11 ¶¶ 443-447.

³¹ In many respects, the circumstances of this waiver align with the facts of *In the Matter of GCI Communication Corp., Waiver of Section 54.1007(a) of the Commission's Rules*, AU Docket No. 12-25, *Order*, 28 FCC Rcd 15874, 15877-78 ¶¶ 10-11 (WTB 2013).

15. IT IS FURTHER ORDERED that a copy of this order SHALL BE transmitted by the Office of the Secretary to the Universal Service Administrative Company.

FEDERAL COMMUNICATIONS COMMISSION

Gary D. Michaels
Deputy Chief, Auctions and Spectrum Access Division
Wireless Telecommunications Bureau